

No. 14768

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United States  
Court of Appeals  
For the Ninth Circuit.

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LY SHEW, as Guardian Ad Litem of Ly Moon and  
Ly Sue Ning, Minors,

Appellant,

vs.

JOHN FOSTER DULLES, as Secretary of State  
of the United States,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Northern District of California,  
Southern Division.

FILED

OCT 20 1955

PAUL P. O'BRIEN, CLERK

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No. 14768

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**Court of Appeals**  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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For Appellants.

CHAUNCEY TRAMUTOLO, ESQ.,

United States Attorney,  
San Francisco, California,

For Appellee.





In the District Court of the United States for the  
Northern District of California, Southern Division

Civil No. 30159

LY SHEW, as Guardian Ad Litem of LY MOON,  
a Minor,

Plaintiff,

vs.

THE HONORABLE DEAN ACHESON, as Secre-  
tary of State of the United States,

Defendant.

PETITION FOR DECLARATORY JUDGMENT  
UNDER SEC. 503 OF THE NATIONALITY  
ACT OF 1940

Comes Now, Ly Shew, as guardian ad litem of Ly  
Moon, a minor, and seeking declaratory relief and  
judgment on behalf of said minor, complains and  
alleges as follows:

I.

That the said Ly Shew is the natural blood father  
of the minor herein and is a citizen of the United  
States and was first admitted to the United States  
as a citizen on July 15, 1912, at the time of his en-  
trance at the Port of San Francisco, ex SS  
"Korea" and that as evidence of his citizenship has  
been issued Certificate of Identity #8216 by the  
Immigration and Naturalization Service of the  
United States.

That since the date of his first entrance into the

United States as a citizen thereof and at the time of the birth of his son, Ly Moon, and at the present time, the said Ly Shew has been and now is a permanent resident of the City and County of San Francisco, State of California, within the jurisdiction of the District Court of the United States in and for the Northern District of California.

## II.

That after the admission of the said Ly Shew to the United States as a citizen thereof, the said Ly Shew, while maintaining his permanent residence and domicile within the said City and County of San Francisco, State of California, made a trip to China in 1932 and during said trip contracted a lawful and valid marriage in accordance with the marriage customs and ceremonies there recognized and prevailing with Chin Shee in the Toyshan District, Kwongtung Province (Canton) China, and that as a result of the said marriage there was born to the said Chin Shee and the said Ly Shew as the lawful issue thereof a son named Ly Moon on or about October 18, 1933, in the Jung Sing Hung Village, Toyshan District, Kwongtung Province (Canton) China, which said son is the petitioner upon whose behalf this action is brought.

That the said Ly Shew and the said Chin Shee are also the parents of other children born as a result of said marriage.

## III.

That the said marriage, and the details thereof, and the birth of the said Ly Moon, were duly re-

ported to the United States Immigration and Naturalization Service upon the occasion of the said Ly Shew's trip to China and his return therefrom and other departures and returns to this country made through the Port of San Francisco.

#### IV.

That the said Ly Moon, a minor, is a citizen of the United States under the provisions of Sec. 1993 revised statutes of the U. S. (8 USCA 6) and Secs. 101 and 504 of the Nationality Act of 1940 (54 Stat. 1137; 8 USCA 907).

#### V.

That the said Ly Moon, a minor, now temporarily resides at 104 Kilung Street, first floor, c/o Hum Shui Po, Kowloon, in the British Crown Colony of Hong Kong, and the said Ly Moon, a minor, hereby claims the City and County of San Francisco, State of California, as his permanent residence.

#### VI.

That for over four (4) years last past the said minor has presented various and sundry applications to the American Consul at Canton, China, and in the British Crown Colony of Hong Kong, for permission to enter the United States as a citizen thereof and/or for the purpose of having his claim to citizenship passed upon and adjudicated by the Immigration and Naturalization Service of the United States and despite said repeated applications, the said minor has been unable to secure a

visa, permit or permission to travel to and enter the United States from the said American Consul; and, the said American Consul has refused to grant said application, visa or permit to travel to the United States for reasons that are unknown to petitioner herein.

#### VII.

That the Honorable Dean Acheson, defendant herein, as Secretary of State of the United States, is the duly qualified, authorized and acting administrative head of the Department of State of the United States and in such capacity is in charge of the various United States Consuls and Consulates, including the United States Consulate located in the British Crown Colony of Hong Kong and as the administrative head of such department is responsible for and controls the administrative functions of the said United States Consul; and that the said American Consul in the British Crown Colony of Hong Kong is the official representative of and subject to the orders and direction of the defendant herein.

#### VIII.

That the said Ly Moon, a minor, has never committed any act or executed any document of repatriation nor renounced his United States citizenship and has always considered himself to be and declared himself to be a citizen of the United States and it has always been the intention of the said minor to come to the United States, the country of his citizenship, and it has always been the intention of said minor to keep and maintain his domicile

and residence within the said United States and in this behalf the said minor claims residence and domicile within and in the Northern District of California and more particularly within the jurisdiction of this Court.

### IX.

That under the provisions of Sec. 503 of the Nationality Act of 1940 (54 Stat. 1171-1172; 8 USCA 903), the said minor is entitled to prosecute and maintain an action in this Court declaring him to be a national of the United States and under the provisions of such act he is entitled to proceed to and enter the United States for the purpose of presenting his claim in court and securing an adjudication therein.

Wherefore, the said Ly Shew, as guardian ad litem of Ly Moon, a minor, prays judgment on behalf of said minor against the defendant for a judgment and the declaration of this Court adjudging and declaring the said minor to be a citizen and a national of the United States, and, as such national and citizen, entitled to enter into the United States and reside therein; and for such other and further relief as may be meet and proper in the premises.

/s/ STANLEY J. GALE,  
Attorney for Petitioner.

[Endorsed]: Filed November 8, 1950.

[Title of District Court and Cause.]

No. 30159

### ANSWER

Comes now Dean Acheson, Secretary of State of the United States, defendant in the above-entitled action, by and through his attorneys, Frank J. Hennessy, United States Attorney, and Edgar R. Bonsall, Assistant United States Attorney, and in answer to plaintiff's complaint admits, denies, and alleges as follows:

#### I.

Defendant admits that Ly Shew is a citizen of the United States but denies that Ly Moon is the true and lawful son of Ly Shew. Defendant has no knowledge, information or belief as to the other allegations contained in paragraph I of the complaint and therefore denies the same.

#### II.

Defendant has no knowledge, information or belief as to the allegations contained in paragraph II of the complaint and therefore denies the same.

#### III.

Defendant has no knowledge, information or belief as to the allegations contained in paragraph III of the complaint and therefore denies the same.

#### IV.

Defendant has no knowledge, information or belief as to the allegations contained in paragraph IV of the complaint and therefore denies the same.

## V.

Defendant has no knowledge, information or belief as to the allegations contained in paragraph V of the complaint and therefore denies the same.

## VI.

Defendant has no knowledge, information or belief as to the allegations contained in paragraph VI of the complaint and therefore denies the same.

## VII.

Defendant admits that he is the duly appointed, qualified and acting Secretary of State of the United States, and further admits the other allegations contained in paragraph VII of the complaint.

## VIII.

Defendant has no knowledge, information or belief as to the allegations contained in paragraph VIII of the complaint and therefore denies the same.

## IX.

Defendant admits that the complaint herein constitutes an action seeking a judgment declaring the plaintiff to be a national of the United States.

Wherefore, defendant prays that each and every relief sought by plaintiff be denied; that this Court declare a judgment in favor of the defendant that plaintiff has never been a citizen or national of

the United States, and that defendant recover his proper costs against the plaintiff in this action.

/s/ FRANK J. HENNESSY,  
United States Attorney.

/s/ EDGAR R. BONSALE,  
Assistant United States Attorney, Attorneys for  
Defendant.

[Endorsed]: Filed January 11, 1951.

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[Title of District Court and Cause.]

Civil No. 30159

AMENDED COMPLAINT AS OF COURSE

Comes Now Ly Shew, as guardian ad litem of Ly Moon, a minor, and as of course amends his complaint on file herein by withdrawing all of the allegations contained in paragraph II of said complaint and in the place and stead of the said paragraph II alleges as follows:

I.

That the said Ly Shew, prior to his first entrance into the United States, contracted a valid and lawful marriage in accordance with the marriage customs and ceremonies there recognized and prevailing, with Chin Shee, on February 22, 1912, at the Yung Sing Lay Village, Toyshan District, Kwangtung (Canton) Province, China. That the said Ly Shew and Chin Shee were, and are at all times



mentioned herein, husband and wife, and the natural blood parents of the said Ly Moon.

That as a result of the said marriage, there was born to the said Chin Shee and the said Ly Shew, as the lawful issue thereof, a son named Ly Moon, on or about October 18, 1933, in the Jung Sing Hung Village, Toyshan District, Kwangtung Province (Canton) China, which said son is the petitioner upon whose behalf this action is brought.

That the said Ly Shew and the said Chin Shee are also the parents of other children born as a result of said marriage.

Dated: July 20, 1951.

/s/ STANLEY J. GALE,  
Attorney for Plaintiff.

Affidavit of service by mail attached.

[Endorsed]: Filed July 22, 1951.

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[Title of District Court and Cause.]

No. 30159

AMENDED ANSWER

Comes Now Dean Acheson, Secretary of State of the United States, defendant in the above-entitled action, by and through his attorneys, Chauncey Tramutolo, United States Attorney, and Edgar R. Bonsall, Assistant United States Attorney, and in answer to plaintiff's complaint, admits, denies, and alleges as follows:

## I.

Defendant admits that Ly Shew is a citizen of the United States but denies that Ly Moon is the true and lawful son of Ly Shew. Defendant has no knowledge, information, or belief as to the other allegations contained in paragraph I of the complaint and therefore denies the same.

## II.

Defendant has no knowledge, information or belief as to the allegations contained in paragraph II of the complaint and therefore denies the same.

## III.

Defendant has no knowledge, information or belief as to the allegations contained in paragraph III of the complaint and therefore denies the same.

## IV.

Defendant has no knowledge, information or belief as to the allegations contained in paragraph IV of the complaint and therefore denies the same.

## V.

Defendant has no knowledge, information or belief as to the allegations contained in paragraph V of the complaint and therefore denies the same.

## VI.

Defendant has no knowledge, information or belief as to the allegations contained in paragraph VI of the complaint and therefore denies the same.

## VII.

Defendant admits that he is the duly appointed, qualified and acting Secretary of State of the United States, and further admits the other allegations contained in paragraph VII of the complaint.

## VIII.

Defendant has no knowledge, information or belief as to the allegations contained in paragraph VIII of the complaint and therefore denies the same.

## IX.

Defendant admits that the complaint herein constitutes an action seeking a judgment declaring the plaintiff to be a national of the United States.

## X.

Defendant affirmatively asserts that this Court is without jurisdiction of the subject matter of this action in that the plaintiff has never been denied a right or privilege as a national or citizen of the United States as required by Title 8 USCA 903 (Section 503 of the Nationality Act of 1940) under which this action was filed.

## XI.

Defendant affirmatively asserts that the plaintiff does not have a valid cause of action pursuant to Section 503 of the Nationality Act of 1940 in that the plaintiff has failed to exhaust his administrative remedies as the plaintiff's birth was not recorded with an American Consul abroad as provided for by Title 22 CFR 109.12; and further that

the plaintiff's application for documentation as a United States citizen has never been denied by American Consulate General abroad nor has he appealed to the Secretary of State, Washington, D.C.

Wherefore, defendant prays that each and every relief sought by plaintiff be denied; that this Court declare a judgment in favor of the defendant that plaintiff has never been a citizen or national of the United States, and that defendant recover his proper costs against the plaintiff in this action.

/s/ CHAUNCEY TRAMUTOLO,  
United States Attorney,

By /s/ EDGAR R. BONSALL,  
Assistant United States Attorney, Attorneys for  
Defendant.

[Endorsed]: Filed August 24, 1951.

In the District Court of the United States for the  
Northern District of California, Southern Division

Civil No. 31161

LY SHEW, as Guardian Ad Litem of LY SUE  
NING, a Minor,

Plaintiff,

vs.

THE HONORABLE DEAN ACHESON, as Sec-  
retary of State of the United States,

Defendant.

PETITION FOR DECLARATORY JUDGMENT  
UNDER SEC. 503 OF THE NATIONALITY  
ACT OF 1940

Comes Now Ly Shew, as guardian ad litem of  
Ly Sue Ning, a minor, and seeking declaratory re-  
lief and judgment on behalf of said minor, com-  
plains and alleges as follows:

I.

That the said Ly Shew is the natural blood  
father of the minor herein and is a citizen of the  
United States and was first admitted to the United  
States as a citizen on July 15, 1912, at the time of  
his entrance at the Port of San Francisco, Califor-  
nia, ex SS "Korea" and that as evidence of his  
citizenship, affiant has been issued Certificate of  
Identity No. 8216 by the Immigration and Naturali-  
zation Service of the United States.

That since the date of his first entrance into the

United States, as a citizen thereof, and at the time of the birth of his daughter, Ly Sue Ning, and at the present time, the said Ly Shew has been and now is a permanent resident of the City and County of San Francisco, State of California, within the jurisdiction of the District Court of the United States in and for the Northern District of California.

## II.

That the said Ly Shew, prior to his first entrance into the United States, contracted a valid and lawful marriage with Chin Shee, at the Yung Sing Lay Village, Toyshan District Kwangtung (Canton) Province, China, in accordance with the marriage customs and ceremonies there recognized and prevailing, on February 22, 1912; that as a result of the said marriage, there was born to the said Chin Shee and the said Ly Shew, as the lawful issue thereof, a daughter named Ly Sue Ning, on or about January 26, 1937, in the Chung Sim Hung Village, Toishan District, Kwangtung (Canton) China, which said daughter is the petitioner upon whose behalf this action is brought.

That affiants daughter, the said Ly Sue Ning, is also known as Ly Shue Ning.

That the said Ly Shew and the said Chin Shee are also the parents of other children born as a result of the said marriage.

## III.

That the said marriage and the details thereof was duly reported to the United State Immigration

and Naturalization Service upon the occasion of affiant's original entry into the United States, through the Port of San Francisco, in 1912. That the birth of his said daughter, Ly Sue Ning, was not reported to the United States Immigration and Naturalization Service because of the fact that the said Ly Sue Ning, daughter of affiant herein, was born after said affiant's last return trip to the United States from China.

#### IV.

That the said Ly Sue Ning, a minor, is a citizen of the United States under the provisions of Sec. 1993 of the revised statutes of the U. S. (8 USCA 6) and Secs. 101 and 504 of the Nationality Act of 1940 (54 Stat. 1137; 8 USCA 907).

#### V.

That the said Ly Sue Ning, a minor, now temporarily resides at No. 16 Wai Chong Street, first floor, Yammati, Kowloon, in the British Crown Colony of Hong Kong, and the said Ly Sue Ning, a minor, hereby claims the City and County of San Francisco, State of California, as her permanent residence.

#### VI

That for over two (2) years last past, the said minor has presented various and sundry applications to the American Consul at Hong Kong for permission to enter the United States as a citizen thereof and/or for the purpose of having her claim to citizenship passed upon and adjudicated by the

Immigration and Naturalization Service of the United States, and despite said repeated applications, the said minor has been unable to secure a visa, permit or permission to travel to and enter the United States from the said American Consul, and, the said American Consul has refused to grant said application, visa, or permit to travel to the United States, stating that the reason for his refusal was that the said applicant had failed to present satisfactory proof of her American citizenship; that the refusal of the said American Consul to issue the requested documentation aforesaid, was oral.

#### VII.

That the Honorable Dean Acheson, defendant herein, as Secretary of State of the United States, is the duly qualified, authorized and acting administrative head of the Department of State of the United States and in such capacity is in charge of the various United States Consuls and Consulates, including the United States Consulate located in the British Crown Colony of Hong Kong, and as the administrative head of such department, is responsible for and controls the administrative functions of the said United States Consul; and that the said American Consul in the British Crown Colony of Hong Kong is the official representative of and subject to the orders and direction of the defendant herein.

#### VIII.

That the said Ly Sue Ning, a minor, has never committed any act or executed any document of



repatriation nor renounced her United States citizenship and has always considered herself to be and declared herself to be a citizen of the United States and it has always been the intention of the said minor to come to the United States, the country of her citizenship, and it has always been the intention of said minor to keep and maintain her domicile and residence within the said United States and in this behalf, the said minor claims residence and domicile within and in the Northern District of California and more particularly within the jurisdiction of this Court.

### IX.

That under the provisions of Sec. 503 of the Nationality Act of 1940 (54 Stat. 1171-1172; 8 USCA 903), the said minor is entitled to prosecute and maintain an action in this Court declaring her to be a national of the United States, and under the provisions of such Act, she is entitled to proceed to and enter the United States for the purpose of presenting her claim in court and securing an adjudication therein.

Wherefore, the said Ly Shew, as guardian ad litem of Ly Sue Ning, a minor, prays judgment on behalf of said minor against the defendant for a judgment and the declaration of this Court adjudging and declaring the said minor to be a citizen and a national of the United States, and, as such national and citizen, entitled to enter into the United States and reside therein; and for such

other and further relief as may be meet and proper in the premises.

/s/ STANLEY J. GALE,  
Attorney for Petitioner.

Duly verified.

[Endorsed]: Filed January 11, 1952.

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[Title of District Court and Cause.]

Civil No. 31161

### ANSWER

Comes now Dean Acheson, Secretary of State of the United States, defendant in the above-entitled action, by and through his attorneys, Chauncey Tramtolo, United States Attorney and Edgar R. Bon-sall, Assistant United States Attorney, and in answer to plaintiff's Complaint, admits, denies and alleges as follows:

#### I.

Answering Paragraph I of the Complaint, defendant denies that plaintiff Ly Sue Ning is the true and lawful blood child of Ly Shew. Defendant has no knowledge, information or belief as to the other allegations contained in Paragraph I of the Complaint and therefore denies the same.

#### II.

Answering Paragraph II of the Complaint, defendant has no knowledge, information or belief as

to the allegations contained in Paragraph II of the Complaint and therefore denies the same.

### III.

Answering Paragraph III of the Complaint, defendant has no knowledge, information or belief as to the allegations contained in Paragraph III of the Complaint and therefore denies the same.

### IV.

Answering Paragraph IV of the Complaint, defendant denies that Ly Sue Ning is a citizen of the United States under the provisions of Section 1993 of the United States Revised Statutes and Sections 101 and 504 of the Nationality Act of 1940 and affirmatively asserts that the plaintiff is an alien and citizen of China.

### V.

Answering Paragraph V of the Complaint, defendant has no knowledge, information or belief as to the allegations contained in Paragraph V of the Complaint and therefore denies the same.

### VI.

Answering Paragraph VI of the Complaint, defendant has no knowledge, information or belief as to the allegations contained in Paragraph VI of the Complaint and therefore denies the same.

### VII.

Answering Paragraph VII of the Complaint, defendant admits that he is the duly qualified and act-

that the American Consulate General at Honk Kong  
ing Secretary of State of the United States and  
is an official executive of the defendant herein.

### VIII.

Answering Paragraph VIII of the Complaint, de-  
fendant has no knowledge, information or belief as  
to the allegations contained in Paragraph VIII of  
the Complaint and therefore denies the same.

### IX.

Answering Paragraph IX of the Complaint, de-  
fendant denies that Ly Sue Ning is entitled to prose-  
cute and maintain an action in this Court to declare  
her to be a national of the United States and denies  
that under the provisions of such act she is entitled  
to proceed to and enter the United States for the  
purpose of presenting her claim in Court and se-  
curing an adjudication therein. Defendant affirma-  
tively asserts that plaintiff has no right under the  
statutes cited to proceed to and enter the United  
States and that this Court is without authority to  
direct the defendant to permit her to do so.

### First Affirmative Defense

Defendant affirmatively asserts that he does not  
concede the American citizenship of any of the  
plaintiff's alleged ancestors and specifically denies  
that plaintiff is the blood child of Ly Shew. De-  
fendant further alleges that plaintiff is not a citizen  
of the United States but is, in fact, an alien.

Second Affirmative Defense

That under Section 503 of the Nationality Act of 1940 (8 USCA 903) this Court is without venue and therefore without jurisdiction of the subject matter of this suit for the reason that the Complaint fails to show that plaintiff has a bona fide claim of permanent residence in this District.

Wherefore, defendant prays each and every relief sought by the plaintiff be denied; that this Court declare a judgment in favor of defendant that plaintiff has never been a citizen of the United States; and that the defendant recover his proper costs against the plaintiff in this action.

/s/ CHAUNCEY TRAMUTOLO,  
United States Attorney,

/s/ EDGAR R. BONSALL,

Assistant United States Attorney, Attorneys for  
Defendants.

[Endorsed]: Filed March 3, 1952.

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[Title of District Court and Cause.]

No. 30159

ORDER GRANTING MOTION FOR  
PHYSICAL EXAMINATION

The defendant having moved, pursuant to Rule 35 of the Federal Rules of Civil Procedure, for an order directing the plaintiff herein and his alleged

father to submit to a physical examination, including blood grouping tests, and it appearing to the Court that such tests, if made under proper conditions by persons competent to make and evaluate such tests, may have probative value to disprove, but not to prove paternity and thus may be admissible on a trial on the merits if the trial court should find that the question of paternity is legally in issue, and it further appearing to the Court that such blood grouping tests may properly be ordered under said Rule 35 (see *Beach v. Beach*, 114 F. 2d 479), it is by the Court

Ordered that the defendant's said motion for an order directing the plaintiff herein and his alleged father to submit to a physical examination, including blood grouping tests, be and the same hereby is granted and defendant is directed to prepare an order in conformance with the provisions of said Rule 35.

Dated: August 27, 1952.

/s/MICHAEL J. ROCHE,  
Chief United States  
District Judge.

[Endorsed]: Filed August 27, 1952.

[Title of District Court and Cause.]

No. 31161

ORDER GRANTING MOTION FOR  
PHYSICAL EXAMINATION

The defendant having moved, pursuant to Rule 35 of the Federal Rules of Civil Procedure, for an order directing the plaintiff herein and her alleged father to submit to a physical examination, including blood grouping tests, and it appearing to the Court that such tests, if made under proper conditions by persons competent to make and evaluate such tests, may have probative value to disprove, but not to prove paternity and thus may be admissible on a trial on the merits if the trial court should find that the question of paternity is legally in issue, and it further appearing to the Court that such blood grouping tests may properly be ordered under said Rule 35 (see *Beach v. Beach*, 114 F. 2d 279), it is by the Court

Ordered that the defendant's said motion for an order directing the plaintiff herein and her alleged father to submit to a physical examination, including blood grouping tests, be and the same hereby is granted and defendant is directed to prepare an order in conformance with the provisions of said Rule 35.

Dated: August 27, 1952.

/s/ MICHAEL J. ROCHE,

Chief United States

District Judge.

[Endorsed]: Filed August 27, 1952.

[Title of District Court and Cause.]

Nos. 30159 and 31161

## OPINION

Goodman, District Judge.

These are two suits, among hundreds, filed in this court by persons of Chinese ancestry, pursuant to Section 503 of the Nationality Act of 1940 (8 USC 903), seeking judgment declaring plaintiffs to be nationals of the United States. Ly Moon, plaintiff in No. 31059, aged approximately seventeen years at the time of the filing of the complaint herein, and Ly Sue Ning, plaintiff in No. 31161, aged approximately fifteen years, both claim to be the blood children of one Ly Shew, the latter admittedly a male citizen of the United States by derivation. Yy Moon alleges that he was born in China, the son of Ly Shew and one Ly Chin Shee, on or about October 18, 1933; Ly Sue Ning alleges that she is the daughter of Ly Shew and Ly Chin Shee, born in China on or about January 26, 1937. Neither has ever been in the United States except for the immediate purpose of prosecuting these actions. Both claim United States citizenship by virtue of Section 1993 of the Revised Statutes<sup>1</sup> which bestowed citizenship upon foreign-born children of citizen fathers. Ly Moon's

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<sup>1</sup>Sec. 1993. All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth, citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.



claim does arise under Section 1993 because that statute was effective at the time of his birth. But Section 1993 was amended in 1934, prior to Ly Sue Ning's birth, by the Act of May 24, 1934, 48 Stat. 797.<sup>2</sup> The amendment provided that United States citizenship should not descend to a foreign-born child of a citizen father until the child had resided in the United States for five years continuously preceding his eighteenth birthday. Ly Sue Ning has not and could not now meet that condition. Her claim to citizenship must rest upon Sections 201(g) and (h) of the Nationality Act of 1940, § USC 601(g), (h),<sup>3</sup> which supersede Section 1993 of the Revised

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<sup>2</sup>Sec. 797. Any child hereafter born out of the limits and jurisdiction of the United States, whose father or mother or both at the time of the birth of such child is a citizen of the United States, is declared to be a citizen of the United States; but the rights of citizenship shall not descend to any such child unless the citizen father or citizen mother, as the case may be, has resided in the United States previous to the birth of such child. In cases where one of the parents is an alien, the right of citizenship shall not descend unless the child comes to the United States and resides therein for at least five years continuously immediately previous to his eighteenth birthday, and unless, within six months after the child's twenty-first birthday, he or she shall take an oath of allegiance to the United States of America as prescribed by the Bureau of Naturalization.

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<sup>3</sup>(g) A person born outside of the United States and its outlying possessions of parents one of whom is a citizen of the United States who, prior to the birth of such person, has had ten years' residence, at least five of which were after attendance in the United States or one of its outlying

Statutes. These Sections of the Nationality Act retroactively vest United States citizenship in a citizen's child born abroad after May 24, 1934, the effective date of the amendment to Section 1993, subject to divestment if the child does not reside in the United States for a period totaling five years between the ages of thirteen and twenty-one.

The testimony at the trial, which lasted three days, was entirely given in the Toy Shan Chinese dialect and interpreted into English. Neither Ly Shew, the alleged father, nor the plaintiffs, nor the witnesses in behalf of plaintiff, could speak a word of English.

Many time the interpreter carried on extensive dialogues with the witnesss before obtaining a response to a question propounded. Inconsistencies and contradictions in testimony became manifest. To fairly determine their effect is difficult, if not im-

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taining the age of sixteen years the other being an alien: Provided, That, in order to retain such citizenship, the child must reside in the United States or its outlying possessions for a period or periods totaling five years between the ages of thirteen and twenty-one years: Provided further, That, if the child has not taken up a residence in the United States or its outlying possessions by the time he reaches the age of sixteen years, or if he resides abroad for such a time that it becomes impossible for him to complete the five years' residence in the United States or its outlying possessions before reaching the age of twenty-one years his American citizenship shall thereupon cease.

(h) "The foregoing provisions of subsection (g) concerning retention of citizenship shall apply to a child born abroad subsequent to May 24, 1934. . . ."

possible. Familiar as we are in this court with Chinese-interpreted testimony, it can be categorically stated that it is well-nigh impossible to determine the creditibility of such witnesses. At least, after ten years of constant trial work, I find it so. Against this unsatisfactory evidentiary background the following general picture has emerged :

Ly Shew, the alleged father of plaintiffs, was admitted to the United States in July of 1912, as a citizen. His citizenship was derived from his father by virtue of the citizenship of the latter. Ly Shew claims to have been, since his entrance into the United States and up to the time of the trial of the cases, a permanent resident of the City and County of San Francisco, State of California, in this District, making his livelihood here. During the course of the years following his entry into the United States, he made several trips to China. On the occasion of one of these trips in 1932, he claims to have married one Ly Chin Shee in the Toy Shan District, Kwan Tung Province, Canton, China. It does not appear that any marriage, according to Western standards was had, but that a declaration or acknowledgment of some kind, the nature of which is obscure, took place. He claims that in the following year, 1933, plaintiff Ly Moon was born and that on a subsequent visit to China in 1937, the plaintiff Ly She Ning was born. He never engaged in any business in China, going there, as he said, to "rest and visit." His permanent residence was always in San Francisco. It may be said, without in any way in-

tending to be facetious, that the main object of his visits to China was for the purpose of procreation. There is testimony that some money was sent to China by Ly Shew from San Francisco to his alleged wife.

As to the paternity of plaintiffs, the government did not and obviously could not present any evidence. For the area within Communist China, wherein plaintiffs claim to have been born and wherein the alleged mother is said to be, and wherein plaintiffs claim to have lived their entire lives, has long been closed to any opportunity for investigation or verification. Thus the only recourse of the defense was to cross-examine the witnesses.

The first, and, indeed the essential requisite to a just decision here, is to determine what standards should be applied in weighing and appraising the evidence offered in behalf of plaintiffs. For these and companion cases are not orthodox adversary suits. Despite the fact that the Secretary of State is party defendant, in every real sense, the people of the United States are defendants. This court is called upon to declare the nationality of plaintiffs. Hence the paramount necessity of an adequate legal yardstick with which to measure the evidence.

Proper selection of standards requires a preliminary consideration of certain historical background. As well it requires an analysis of the statutory history and purpose. And also there is needed an understanding of the unique problem posed by the hundreds of similar cases now before the court.

First as to historical background.

After the discovery of gold in California, a huge number of Chinese immigrants came to the United States, particularly to California. This mass immigration eventually resulted in the enactment of the Chinese Exclusion Acts<sup>4</sup> in 1882, for by that time over 200,000 Chinese had come principally to California. These Acts were, from time to time, extended by successive statutes. They remained in existence until December 17, 1943,<sup>5</sup> when all the Exclusion Acts were repealed. Simultaneously with repeal of the Acts, Chinese were made eligible for immigration and naturalization and an annual quota of 105 was established. 57 Stat. 600.

During the years prior to 1943, thousands of American males of Chinese ancestry, being unable, it is asserted, to find spouses in this country, made periodic visits to China and begot offspring. Up until the effective date of the Nationality Act of 1940, Act of Oct. 14, 1940, 8 USC 501 et seq., there was no specific statutory provision which entitled persons living abroad and claiming United States nationality to have their nationality decreed by court order. So up to that time, American males of Chinese ancestry, who had begotten offspring on visits to China and desired to have the American nationality of such offspring established, as provided, since 1855, by §1993 Revised Statutes, and, since 1934, by 48 Stat. 797, caused such offspring to come to the

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<sup>4</sup>22 Stat. 58.

<sup>5</sup>7 Stat. 600.

United States and they were either admitted by Immigration as United States nationals or denied admission. If any further recourse was sought, it was by way of habeas corpus in federal courts to review Immigration administrative decision. Upon such review, as is now well known, the limit or judicial inquiry was whether the administrative proceedings had afforded due process.

As to the history and purpose of §903.

8 USC 903,<sup>6</sup> authorizing judgments declaratory

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<sup>6</sup>§903. If any person who claims a right or privilege as a national of the United States is denied such right or privilege by any Department or agency, or executive official thereof, upon the ground that he is not a national of the United States, such person, regardless of whether he is within the United States or abroad, may institute an action against the head of such Department or agency in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which such person claims a permanent residence for a judgment declaring him to be a national of the United States. If such person is outside the United States and shall have instituted such an action in court, he may, upon submission of a sworn application showing that the claim of nationality presented in such action is made in good faith and has a substantial basis, obtain from a diplomatic or consular officer of the United States in the foreign country in which he is residing a certificate of identity stating that his nationality status is pending before the court, and may be admitted to the United States with such certificate upon the condition that he shall be subject to deportation in case it shall be decided by the court that he is not a national of the United States. Such certificate of identity shall not be

of United States citizenship, became effective as a part of the Nationality Act of 1940 on January 13, 1941. But the first Chinese suit under §903 was not commenced until August, 1947. *Mah Yung Og vs. McGrath*, D.C. 187 Fed. 2d 199. And in this District the first Chinese case under §903 was filed June 29, 1949. Two more were filed in the same year. In 1950, 22 additional cases were filed. In 1951, 161 cases were filed. Then came the deluge. By the close of business on December 24, 1952,<sup>7</sup> there were on

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denied solely on the ground that such person has lost a status previously had or acquired as a national of the United States; and from any denial of an application for such certificate the applicant shall be entitled to an appeal to the Secretary of State, who, if he approves the denial, shall state in writing the reasons for his decision. The Secretary of State, with approval of the Attorney General, shall prescribe rules and regulations for the issuance of certificates of identity as above provided. Oct. 14, 1940, c. 876, Title I, Subchap. V, §503, 54 Stat. 1171.

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<sup>7</sup>By the provisions of the Immigration and Nationality Act of 1952 (McCarran Act) effective December 24, 1952, the remedy of court action granted by former Section 903 is available only to persons who have resided in the United States. Immigration and Nationality Act of 1952 §360(a). Thus none of the suits now pending in this District could be maintained under the present statute, for none of the plaintiffs have ever resided in the United States. There is a possibility, somewhat remote, that the savings clause of the McCarran Act, §405 (a), may permit the filing of some suits under old Section 903, in cases of the vesting of rights prior to the effective date of the McCarran Act. 12, 1952 Congressional & Administrative News, p. 2706.

file in this District a total of 716 cases. By the same date, 189 cases had been filed in the Southern District of California, a grand total of 905 cases in both California Districts. As near as may be presently ascertained, a total of 1288 cases (including the California suits) have been commenced in the United States. Of the non-California cases, 9 were filed in the District of Oregon and 61 in the Western District of Washington. Thus 75% of all cases are to be determined in this District.

It has been blithely assumed that plaintiffs, who never have been in the United States and who have lived their lives as Chinese, have the status and right to avail themselves of §903. Let us see, by studying Congressional proceedings and examining the language of the statute and its relation to the Nationality Code, whether this is so.

First of all it should be observed that Section 903 is a part of Subchapter V of the Nationality Code of 1940, which immediately follows Subchapter IV, dealing with the subject of expatriation or loss of nationality. The many new grounds for expatriation created by Subchapter IV prompted the Congress to afford a means of protection for persons abroad charged with being expatriates. While the opening words of Section 903 broadly state that "any person" denied a right of citizenship may seek a declaratory judgment, it is clear that the section was designed primarily to protect those who might run afoul of the expatriation provisions of Subchapter IV. See 86 Congressional Record 13247-48. Section 903 permits such persons to sue in a Fed-



eral District Court, whether "within the United States or abroad."

The Congressional proceedings, plus the place of Section 903 in the Nationality Code, persuasively indicate that, in enacting that Section, the Congress never contemplated that it should be available of by persons who never have been in the United States and against whom no charge of expatriation has been made. That the issue of expatriation was the basis upon which the Congress afforded the judicial remedy to those abroad is further manifest by the provision in Section 903 that a "certificate of identity shall not be denied solely on the ground that such person has lost a status previously had or acquired as a national of the United States."

There is no doubt about the Congressional intent to allow any person in the United States to bring suit under Section 903, if any of his rights or privileges as a citizen are denied. But as to those abroad, the objective of the statute is clearly in aid of those charged with expatriation. There is not the slightest evidence that the Congress ever intended Section 903 to encompass a declaratory proceeding to determine the identity of claimants such as plaintiffs.

The real purpose and intent of §903 is pointed out, not because the court intends to rest decision upon an interpretation of the statutory meaning, but to emphasize the need for careful scrutiny of these and like causes. For it appears that in not one single case of the 716 pending is the issue of expatriation tendered. In each case the issue to be

determined is that of identity, namely, who is the person who makes the claim of United States Nationality?

As to the special problem of the 716 cases.

In the Southern District of California, in the case of *Mar Gong vs. McGranery*, decided Dec. 15, 1952, Judge Westover, who has tried approximately 20<sup>8</sup> of the 189 cases on file in that District, calls attention to the "mutuality" of the facts in the cases of these Chinese born plaintiffs. He points out that: (1) the alleged father is a citizen by derivation; (2) the father returns to the ancestral village to marry; (3) a child is born within a year; (4) the father returns to the United States after the wife has conceived a second time; (5) other children are conceived, in some cases, upon subsequent visits to China; (6) when the children are in midteens, they apply to come to the United States; (7) usually the last-born child is not seen by the father until arrival in the United States; (8) each visit to China produces another "crop" of sons; (9) apparently there is no impotence, because every visit to China result in offspring; (10) the offspring are preponderantly male; (11) the offspring are all born in an unknown rural village, where the homes and villages are described as being alike; (12) there are no doctors, only midwives; (13) all offspring survive and are strong and healthy.

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<sup>8</sup>Besides the instant causes, I have heard the cases of four other plaintiffs and am this day filing decisions as to them.

Substantially most of what Judge Westover says applies to the cases in this District.

It is well to consider these matters, because of the amount of judicial time which may be required to dispose of these causes. We have estimated that it will take the full time of one of the judges of this court 8 years to try and dispose of the cases. And if all seven judges of the court were to devote all their time to their disposition, it would require over one year to clear the calendar of the §903 cases.

The government has contended that the records of the State Department show that many of the applications for certificates of identity made to consular officers in Hong Kong (the only consular office now functioning in continental China) are fraudulent. It further points out the impossibility of checking the identity of the applicants.

A survey of the 716 cases here shows that 95% of the plaintiffs claim to have been born in Kwang Tung Province and 62% in the Toy Shan District of Kwang Tung Province. The villages alleged to be the places of birth are unknown to United States authorities and cannot be located on available maps.

An examination of 354 of the 716 complaints shows 367 of the plaintiffs to be males and 39 to be female. (More than one plaintiff is joined in some complaints.)

The Department of Justice has made an examination of 317 suits filed elsewhere in the United States. Statistics revealed in these suits show that among the families concerned in these 317 suits, 1215 male children were born as against 169 female. The De-

partment of Justice also reports that a survey made in Hong Kong recently reveals that of 149 applicants for certificates of identity, there was a ratio of 9 to 1 male births.

Statistics recently collected by the State Department from applications for certificates of identity filed in Hong Kong show that a preponderance of applicants claim birth on the day of the month corresponding to the number of the month, for example 2nd day of the 2nd month of the Chinese calendar. The government contends that this is indicative of fraud in that the dates are selected to make them easy to memorize.

In this district between the years 1947 to 1950 inclusive, there were 53 criminal prosecutions against Chinese for false claims of citizenship due to falsified birth certificates or travel documents. This is exclusive of a great many cases not prosecuted because of lack of evidence of criminal intent.

Consideration of these factors and circumstances does not mean that the court is conducting an investigation for the purpose of summarily disposing of all these cases. They are related solely in order to furnish some guide and aid in the judicial process of evaluating testimony offered to support claims to the priceless right of American citizenship. For each one of these cases requires the determination of the identity of the claimant to citizenship. And such identity rests upon evidence given in a foreign language as to birth, in an inaccessible foreign area, of persons born and living

under a completely foreign culture, with no means of investigation or verification open to the people of the United States, who are vitally concerned. Furthermore, it is a foreign culture, which does not generally recognize ethical demands beyond family loyalty.<sup>9</sup>

The plaintiffs have alleged in their complaint that they have always considered themselves to be citizens of the United States and that it has always been their intention to come to United States and further that it has always been their intention to keep and maintain their domicile and residence in the United States. But the evidence indisputably shows this to be untrue. To the contrary, the evidence shows these minor children to be Chinese in every sense of the word. They know, and knew, nothing about the United States except that their alleged father seeks to bring them here. And they come in compliance with that filial dictate.

Standards to be applied in weighing the testimony.

A proceeding under §903 is a primary and original action. In my opinion, it is not a *de novo* proceeding, as has been stated. For to denominate a suit as *de novo* means that there has been some other proceeding concerning the same issue, but that the instant cause is being heard independent of such prior proceeding.

But whether the suit be primary or *de novo*, the

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<sup>9</sup>See F. S. C. Northrup, *The Taming of the Nations*, MacMillan 1952; also Lin Yutang, *My Country and My People*, John Day, N. Y. 1939.

burden of proving plaintiffs' identity rests upon plaintiffs. Particularly is this so when the burden is to prove claimants' United States citizenship. Upon review of immigration proceedings where entry into the United States was sought by Chinese applicants upon the ground that the applicants were United States citizens, it has been held that the burden of proving applicants to be children of American citizens rested upon applicants. *Wong Ying Loon vs. Carr*, 9 Cir. 108 F. 2d 91; *Yee Suey vs. Ward*, 1 Cir. 104 F. 2d 900; *Ex parte Lee Fong Fook*, 74 Fed. Supp. 68.

It would seem beyond question that a similar burden rests upon plaintiffs here.

Against the background of considerations described *supra*, what is the nature and extent of the burden of proof of plaintiffs?

Plaintiffs contend that they have made a *prima facie* case, that the burden of going forward consequently shifted to the defense, that since the defense presented no evidence, it failed to carry its burden, ergo, judgment should go for plaintiffs. Such reasoning begs the question as to what constitutes a *prima facie* case in this sort of proceeding. Whether or not the showing made is *prima facie* depends upon the nature and extent of the burden of proof.

The burden of proof resting upon plaintiffs is to show that they are persons who, because of their identity, are entitled to be judicially declared to be American citizens.

This brings us to a consideration of what degree

of proof is necessary in order to establish their identity.

Constitutionally, only those born or naturalized in the United States and subject to the jurisdiction thereof, are citizens. Const. Amdt. XIV. The power to fix and determine the rules of naturalization is vested in the Congress. Const. Art. I, sec. 8, Cl. 4. Since all persons born outside of the United States, are "foreigners,"<sup>10</sup> and not subject to the jurisdiction of the United States, the statutes, such as §1993 and 8 USC 601, derive their validity from the naturalization power of the Congress. *Elk vs. Wilkins*, 112 U. S. 94, 101; *Wong Kim Ark vs. U. S.* 169 U. S. 649, 702, (1898). Persons in whom citizenship is vested by such statutes are naturalized citizens and not native-born citizens. *Zimmer vs. Acheson*, 191 F. 2d 209, 211 (10 Cir. 1951); *Wong Kim Ark vs. U. S.* supra.

While under §903, the courts are not granted the jurisdiction to "admit" to citizenship, as under the naturalization statutes, the jurisdiction to "declare" citizenship by naturalization pursuant to §903 is substantially equivalent. This is so because under §903, a decree favorable to petitioner in effect "makes" petitioner a citizen, whereas an unfavorable decree requires deportation to the foreign land of birth. Consequently, in my opinion, a decree declaring citizenship by naturalization is in all respects the same as a decree admitting to citizenship.

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<sup>10</sup>See *Boyd vs. Nebraska ex rel Thayer*, 143 U. S. 135; *U. S. vs. Harbanuk*, 1 Cir. 62 F. 2d 759, 761.

Indeed, the consequences of denying the prayer of petitioners here are much more dire than those resulting from denying petitions for naturalization, for in the latter case the petitioners may remain, in most cases, in the United States, while in the former, the result is deportation.

The degree of proof therefore, required of plaintiffs, should be of substantive parity with that required of petitioners for naturalization.

It has been the rule in naturalization cases that an applicant for citizenship has the burden of convincing the court by satisfactory evidence that he is entitled to citizenship.<sup>11</sup> And that burden never shifts to the government.<sup>12</sup> In the reverse process of denaturalization, the rule is that citizenship may not be annulled except by clear, unequivocal and convincing evidence.<sup>13</sup>

Where entry into the United States is sought upon the basis of the entrant's claim to United States citizenship, the rule is that the proof of alleged citizenship must be clear and convincing.<sup>14</sup>

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<sup>11</sup>U.S. v. Schwimmer, 279 U.S. 644, 649 (1929); Tutun v. U.S. 270 U.S. 568, 578 (1926); U.S. v. Macintosh, 283 U.S. 605 (1931); In re Laws, 59 Fed. Supp. 179 (N.D.Cal.) (1944); Petition of Boric, 61 Fed. Supp. 133, 136 (Ore. 1945); Petition of Sam Hoo, 63 Fed. Supp. 439 (N.D.Cal.) (1945).

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<sup>12</sup>See cases cited in Note #11.

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<sup>13</sup>Schneiderman v. U.S. 320 U.S. 118 (1943); Baumgarten v. U.S. 322 U.S. 665 (1944).

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<sup>14</sup>Lee Sim v. U.S. 218 Fed. 432, 435 (2 Cir. 1914); Ex parte Chin Him, et al. 227 Fed. 131, 133 (W.D. N.Y. 1915).



Clear and convincing proof is a standard frequently imposed in civil cases where the wisdom of experience has demonstrated the need for greater certainty.<sup>15</sup> This high standard may be required to sustain claims which have serious social consequences or harsh or far-reaching effects on individuals.<sup>16</sup> To justify an exceptional judicial remedy<sup>17</sup> or to circumvent established legal safeguards,<sup>18</sup> the proof must usually meet this standard. Instruments which have established legal rights and warrant great reliance may not be contradicted except

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<sup>15</sup>IX Wigmore on Evidence § 2498 at page 329 (3rd Ed. 1940); 32 Corpus Juris Secundum, Evidence § 1023, (1924); 20 American Jurisprudence, Evidence §§ 1252-53 (1939).

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<sup>16</sup>Eg. Note, 128 A.L.R. 713 (1940) (degree of proof to establish the illegitimacy of children born in wedlock); Note, 13 Minnesota Law Review 580 (1929) (proof of adultery in divorce actions); Note, 12 A.L.R. 2d 153 (1950) (showing necessary for rescission of divorce decree after remarriage); Commissioner v. Ryan, 238 App. Div. 607, 265 N.Y.S. 286 (1933) (proof in filiation proceeding); Johnson v. Feskens, 146 Or. 657, 31 P. 2d 667 (1934) (proof to justify forfeiture under a contract); Dickson v. St. Louis & K.R.Co. 168 Mo. 90, 67 S. W. 642 (1902) (to divest title to real estate for breach of a condition subsequent).

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<sup>17</sup>Eg. 49 American Jurisprudence, Specific Performance § 169 (1943) (proof of the existence of a contract when specific performance is demanded).

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<sup>18</sup>Eg. 1. American Jurisprudence, Acknowledgment § 155 (1936) (to impeach an acknowledgment).

by this degree of proof.<sup>19</sup> As well, this standard is employed in cases where the opportunity for fraud and the temptation to perjury is great. Thus, this standard must be met to sustain certain claims which are easily fabricated and difficult to disprove, or which are evidenced merely by the oral testimony of interested witnesses as to events long past.<sup>20</sup>

The factors which have prompted the courts to exact a high standard of proof in other cases, are

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<sup>19</sup>36 Am. Jur., Mortgages §§ 134-35 (1941); Note, L.R.A. 1916B 192 (to show an absolute deed is a mortgage); 9 Am. Jur., Cancellation of Instruments § 63 (1937); 45 Am. Jur., Reformation of Instruments §§ 116-17 (1943); Note, 94 A.L.R. 1278 (1935) Note, 48 A.L.R. 1462 (1927); 117 A.L.R. 1022 (1938); (to justify reformation or rescission of a written instrument for fraud, mistake, or undue influence).

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<sup>20</sup>Eg. 57 Am. Jur., Wills §§ 981-83 (1948); (to prove a lost will); 57 Am. Jur., Wills § 728 (1948); Note, 69 A.L.R. 167 (1930) (to prove agreement to leave property to another); Note, 7 A.L.R. 2d 25 (1949) (proof of agreement for compensation for services rendered to a relative); 24 Am. Jur., Gifts § 133 (1933) (to prove a parol gift after the death of the donor); 54 Am. Jur., Trusts §§ 620-24 (1945); 23 A.L.R. 1500 (1923); (oral proof of an express trust in realty or personalty, or of facts giving rise to a resulting or constructive trust); *Furman v. St. Louis Union Trust Co.*, 338 Mo. 884, 92 S.W. 2d 726 (1936) (agreement to adopt as basis for sustaining right to inheritance); *The Barbed Wire Patent*, 143 U.S. 275 at 284 (1892) (to prove prior anticipatory use of an invention); *Commissioner v. Ryan*, 238 App. Div. 607, 265 N.Y.S. 286 (1933) (proof in filiation proceedings).

present to a great degree in these Section 903 cases. A judgment declaratory of the American citizenship of a person who has grown up in an alien culture and whose only claim to citizenship is based on heredity vitally affects the American people. All the rights and privileges of citizenship would be thereby vested in a person totally unprepared to exercise them.

Both the temptation and the opportunity for fraud is great in these cases. American citizenship is indeed a prize for those persons seeking to escape the misery of Communist China. A plausible claim is easily presented and virtually impossible for the government to meet. The facts to substantiate the claim rest almost entirely within the sole knowledge of interested persons.

The standard of clear and convincing proof, I hold, should be applied in all cases where an applicant invokes the judicial power to affirm a claimed right of United States citizenship by naturalization. It should be applied in these § 903 cases.

Since I find the evidence presented in support of plaintiffs' cause to be neither satisfactory nor clear nor convincing, they have not sustained their burden of proof and their prayer should be denied.

The Court does not find that the plaintiffs and their witnesses are not telling the truth. But rather I cannot tell whether they are or not. Their evidence has neither the satisfactoriness or clarity or convincing character that justifies, in effect, the conferring of American citizenship.

It may well be that Ly Shew is the father of the two plaintiffs. In denying the relief asked for in the complaint, I am not finding that he is not their father. I am denying the petition because the evidence does not meet the proper standards. In some respects it is so inconsistent as not to be credible. It may be said, and indeed was argued, that a decision adverse to the plaintiffs is cruel and that its effect is to separate a father from his children and to break up the home. The short answer is that the plaintiffs have always been with the alleged mother in China. Their home has always been there. The alleged father has rarely, if at all, seen the plaintiffs. In fact he never had seen the plaintiff Ly Sue Ning until she arrived in the United States. The father's permanent residence has always been in the United States. He has never had any home in China. For all practical purposes, the plaintiff children are strangers to him. So what is defeated by denial of relief here is not the family home but the effort to come into the United States.

During the trial, the government moved to strike certain statements of plaintiffs and their alleged father as to the alleged father's paternity. The statements were claimed to be admissible under the so-called "pedigree" exception to the hearsay rule. Upon the record, I see no need for resolving the claimed issue of law. I will allow the testimony to remain in the record. For I attach no weight to it. "The mere say-so of interested witnesses does not have to be accepted." *Flynn ex rel. Yee Suey v. Ward*, 104 F. 2d 902 (1 Cir. 1939).

We can well understand the desire of those who speak for plaintiffs to have them admitted and join the American Citizenry. In every sense, so far as I am concerned, this is "God's Country." But as a court, we are guardians and custodians of a precious fund. Every American citizen has the right to demand that we do not dispense the fund except to those who are unequivocally entitled to share in it. If we are satisfied to apply any lesser standards in these cases, we might just as well issue a rubber stamp decree admitting all the plaintiffs in the 716 suits filed in this district. But this would be a completely unbecoming judicial act and obviously I won't perform it.

Judgment for defendant upon findings to be presented pursuant to the Rules.

Dated: January 12, 1953.

[Endorsed]: Filed January 12, 1953.

In the United States District Court for the  
Northern District of California, Southern  
Division

No. 30159

LY SHEW, as Guardian ad Litem for Ly Moon,  
Plaintiff,

vs.

DEAN ACHESON, as Secretary of State,  
Defendant.

No. 31161

LY SHEW, as Guardian ad Litem of Ly Sue Ning,  
Plaintiff,

vs.

DEAN ACHESON, as Secretary of State,  
Defendant.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled action came on for trial on the 2nd, 3rd and 4th days of September, 1952, and the 14th day of November, 1952, before the above-entitled Court, Honorable Louis E. Goodman presiding, Stanley J. Gale, Esq., appearing as attorney for the plaintiffs above named, and Chauncey Tramutolo, Esq., United States Attorney for the Northern District of California, and Charles Elmer Collett, Esq., Assistant United States Attorney for said district, appearing as attorneys for the defendant above-named; and the evidence having been received and the Court having fully considered the

same, and having filed herein its opinion, hereby makes the following Findings of Fact and Conclusions of Law.

### Findings of Fact

#### I.

It is not true that the persons who claim to be the plaintiffs herein have always considered themselves and declared themselves to be citizens of the United States; it is not true that they had always intended to come to the United States, and it is not true that it had always been their intention to keep and maintain a domicile and residence within the United States.

It is not true that the residence and domicile of said persons who claim to be plaintiffs is within the Northern District of California, or in the United States of America.

#### II.

The persons who claim to be plaintiffs have failed to introduce evidence of sufficient clarity to satisfy or convince this Court that Ly Shew is the natural blood father of persons known as Ly Moon and Ly Sue Ning, or that the persons who appeared before this Court claiming to be plaintiffs Ly Moon and Ly Sue Ning are in truth and fact Ly Moon and Ly Sue Ning.

### Conclusions of Law

The persons appearing before the Court as plaintiffs in this action are not entitled to the relief prayed for.

Let Judgment be entered accordingly.

Dated: This 28th day of January, 1953.

/s/ LOUIS E. GOODMAN,  
United States District Judge.

Lodged January 19, 1953.

[Endorsed]: Filed January 29, 1953.

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In the United States District Court for the  
Northern District of California, Southern  
Division

No. 30159

LY SHEW, as Guardian ad Litem, for Ly Moon,  
Plaintiff,

vs.

DEAN ACHESON, as Secretary of State,  
Defendant.

No. 31161

LY SHEW, as Guardian ad Litem for Ly Sue  
Ning,  
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DEAN ACHESON, as Secretary of State,  
Defendant.

### JUDGMENT

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the 2nd, 3rd and 4th days of September, 1952, and



the 14th day of November, 1952, before the above-entitled Court, Honorable Louis E. Goodman presiding, Stanley J. Gale, Esq., appearing as attorney for the plaintiffs above named, and Chauncey Tramutolo, Esq., United States Attorney for the Northern District of California, and Charles Elmer Collett, Esq., Assistant United States Attorney for said district, appearing as attorneys for the defendant above-named; the evidence having been received, the Court having fully considered the same, and having filed herein its Findings of Fact and Conclusions of Law, and having directed that judgment be entered in accordance therewith,

Now, Therefore, It Is Hereby Ordered, Adjudged  
And Decreed:

I.

That the plaintiffs, Ly Moon and Ly Sue Ning are not nationals or citizens of the United States.

II.

That the defendant recover costs in this action in the sum of \$. . . . .

So Ordered. Dated: January 28th, 1953.

/s/ LOUIS E. GOODMAN,  
United States District Judge.

Lodged January 19, 1953.

[Endorsed]: Filed January 29, 1953.

Entered January 30, 1953.

[Title of District Court and Causes.]

Civil Nos. 30159 and 31161.

### MOTION

To The Honorable Louis E. Goodman, Judge of  
The District Court:

Comes Now the Plaintiffs above-named and move this Court to vacate and set aside the Findings of Fact and Conclusions of Law and the Judgment and Decree of this Court, entered and filed on January 23, 1953, in the above-entitled matter.

Said Motion is made upon the grounds that said Judgment was entered prematurely; that the Findings of Fact and Conclusions of Law have not been settled; that no hearings have been held upon the Proposed Amendments to the Findings of Fact and Conclusions of Law.

Dated: January 31, 1953.

/s/ STANLEY J. GALE,  
Attorney for Plaintiffs.

Memorandum of Points and Authorities  
Rule 4 (c), (d) and (e), Rules of Court, North-  
ern District, as Amended July 12, 1951.

[Endorsed]: Filed February 2, 1953.

[Title of District Court and Causes.]

Nos. 30159 and 31161

FINDINGS OF FACTS AND  
CONCLUSION OF LAW

The above-entitled actions, heretofore consolidated for trial by Order of this Court, came on for trial on the 2nd, 3rd, and 4th days of September, 1952, and thereafter the matter was continued and further trial was held on the 14th day of November, 1952, and the 2nd day of December, 1952, before the above-entitled Court, Honorable Louis E. Goodman presiding; Stanley J. Gale appearing as Attorney for the plaintiffs above named; and Chauncey Tramutolo, United States Attorney for the Northern District of California, and Charles Elmer Collett, Assistant United States Attorney, appearing as Attorneys for the defendant above-named; and evidence having been received therein and the Court having fully considered the same and, on January 12, 1953, having filed its Opinion herein, and having filed herein on January 29, 1953 its Findings of Fact and Conclusions of Law and having thereafter set aside said Findings, now hereby makes the following Findings of Fact and, from said Findings of Fact, draws the following Conclusion of Law.

Findings of Fact

I.

It is not true that Ly Mon and Ly Sue Ning, the persons who claim to be the plaintiffs herein,

have always considered themselves and declared themselves to be citizens of the United States; it is not true that they have always intended to come to the United States; it is not true that it has always been their intention to keep and maintain their domicile and residence within and in the United States; it is not true that the residence and domicile of said Ly Moon and Ly Sue Ning is within the Northern District of California or within the United States of America.

## II.

That the persons who call themselves Ly Moon and Ly Sue Ning and who claim to be the plaintiffs herein and who claim to be the children of Ly Shew have failed to introduce evidence of sufficient clarity to satisfy or convince this Court that Ly Shew is the natural blood father of the persons known as Ly Moon and Ly Sue Ning; or that they were born at the times and in the places claimed; or that the persons who appeared before this Court claiming to be Ly Moon and Ly Sue Ning are in truth and in fact Ly Moon and Ly Sue Ning.

### Conclusion of Law

The persons appearing before this Court as plaintiffs in this action are not entitled to the relief prayed for in the petitions.

Let judgment be entered accordingly.

Dated: February 18, 1953.

/s/ LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed February 18, 1953.

In the District Court of the United States in and  
for the Northern District of California, South-  
ern Division

Civil No. 30159

LY SHEW, as Guardian ad Litem of LY MOON,  
a minor,

Plaintiff,

vs.

THE HONORABLE DEAN ACHESON, as Sec-  
retary of State of the United States,

Defendant.

Civil No. 31161

LY SHEW, as Guardian ad Litem of LY SUE  
NING, a minor,

Plaintiff,

vs.

THE HONORABLE DEAN ACHESON, as Secre-  
tary of State of the United States,

Defendant.

### JUDGMENT

The above-entitled action came on for trial on  
the 2nd, 3rd and 4th days of September, 1952, and  
the 14th day of November, 1952, and the 2nd day  
of December, 1952, before the above-entitled Court,  
Honorable Louis E. Goodman presiding, Stanley  
J. Gale, Esq., appearing as Attorney for the plaint-  
iffs above-named, and Chauncey Tramutolo, United  
States Attorney for the Northern District of Cali-  
fornia, and Charles Elmer Collett, Assistant United

States Attorney for said district, appearing as Attorneys for the defendant above-named; the evidence having been received, the Court having fully considered the same, and having filed herein its Findings of Fact and Conclusions of Law, and having directed that Judgment be entered in accordance therewith,

Now, therefore, it is hereby Ordered, Adjudged and Decreed:

I.

That the relief sought by the plaintiffs, Ly Moon and Ly Sue Ning, be and the same is denied.

II.

That the defendant recover costs in this action in the sum of \$.....

So Ordered:

Dated: February 18, 1953.

/s/ LOUIS E. GOODMAN,  
United States District Judge.

[Endorsed]: Filed February 18, 1953.

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[Title of District Court and Causes.]

Civil Nos. 30159 and 31161

NOTICE OF APPEAL

Comes Nok Ly Shew, as Guardian ad Litem of Ly Moon and Ly Sue Ning, minors, and hereby gives notice to appeal and does hereby appeal to

the United States Court of Appeals for the Ninth Circuit, from the Judgment of this Court, entered on the 18th day of February, 1953, in the above-entitled matters, in favor of the Defendant above-named and against the said Plaintiffs above-named, and from the whole thereof.

Dated: March 17, 1953.

/s/ STANLEY J. GALE,  
Attorney for Plaintiffs.

[Endorsed]: Filed March 18, 1953.

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[Title of District Court and Cause.]

Civil No. 30159

### ORDER

Upon Motion duly made, and good cause being shown therefor, It Is Hereby Ordered that the Honorable John Foster Dulles, as Secretary of State of the United States, be substituted for and in the place and stead of the Honorable Dean Acheson, as Defendant in the above-entitled action.

Dated: April 6, 1953.

/s/ LOUIS E. GOODMAN,  
Judge of the District Court.

[Endorsed]: Filed April 7, 1953.

[Title of District Court and Cause.]

Civil No, 31161

## ORDER

Upon Motion duly made, and good cause being shown therefor, It Is Hereby Ordered that the Honorable John Foster Dulles, as Secretary of State of the United States, be substituted for and in the place and stead of the Honorable Dean Acheson, as Defendant in the above-entitled action.

Dated: April 6, 1953.

/s/ LOUIS E. GOODMAN,  
Judge of the District Court.

[Endorsed]: Filed April 7, 1953.

[Title of District Court and Causes.]

Nos. 30159 and 31161

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in the above-entitled cases and that they constitute the record on appeal as designated by the attorney for the appellants:



Order appointing Guardian ad litem. (No. 30159.)

Order appointing Guardian ad litem. (No. 31161.)

Petition for declaratory judgment. (No. 30159.)

Petition for declaratory judgment. (No. 31161.)

Answer. (No. 30159.)

Answer. (No. 31161.)

Amended complaint as of course. (No. 30159.)

Amended answer. (No. 30159.)

Order granting motion for physical examination. (No. 30159.)

Order granting motion for physical examination. (No. 31161.)

Opinion.

Findings of Fact and conclusions of law filed January 29, 1953.

Judgment filed January 29, 1953.

Motion to vacate and set aside the Findings of Fact and Conclusions of Law and Judgment filed January 29, 1953.

Findings of fact and conclusions of law filed February 18, 1953.

Judgment filed February 18, 1953.

Notice of appeal.

Statement of points which appellant intends to rely upon in the appeal.

Order substituting defendant. (No. 30159.)

Order substituting defendant. (No. 31161.)

Designation of contents of record on appeal.

Supplemental designation of contents of record, filed March 28, 1953.

Supplemental designation of contents of record,  
filed April 10, 1953.

Reporter's transcript, August 19, 1952.

Reporter's transcript, September 2, 1952.

Reporter's transcript, September 3, 1952.

Reporter's transcript, November 14, December  
2, 1952 and February 3, 1953.

Plaintiff's Exhibit 1.

Plaintiff's Exhibit 2.

Plaintiff's Exhibit 3.

Plaintiff's Exhibit 4 for ident.

Plaintiff's Exhibit 5 for ident.

Plaintiff's Exhibit 6 for ident.

Plaintiff's Exhibit 7.

Plaintiff's Exhibit 8.

Plaintiff's Exhibit 9.

Plaintiff's Exhibit 10.

Plaintiff's Exhibit 11.

Plaintiff's Exhibit 12-A.

Plaintiff's Exhibit 12-B.

Plaintiff's Exhibit 12-C.

Plaintiff's Exhibit 13.

Defendant's Exhibit A for ident.

Defendant's Exhibit B for ident.

Defendant's Exhibit D.

In Witness Whereof I have hereunto set my  
hand and affixed the seal of said District Court this  
14th day of April, 1953.

[Seal] C. W. CALBREATH,

Clerk,

By /s/ C. M. TAYLOR,

Deputy Clerk.

[Endorsed]: No. 13808. United States Court of Appeals for the Ninth Circuit. Ly Shew, as Guardian ad Litem of Ly Moon and Ly Sue Ning, Minors, Appellant, vs. John Foster Dulles, as Secretary of State of the United States, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed April 14, 1953.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13808

LY SHEW, as Guaradian ad Litem of LY MOON,  
a Minor,

Appellant,

vs.

THE HONORABLE JOHN FOSTER DULLES,  
as Secretary of State of the United States,  
Appellee.

LY SHEW, as Guardian ad Litem of LY SUE  
NING, a Minor,

Appellant,

vs.

THE HONORABLE JOHN FOSTER DULLES,  
as Secretary of State of the United States,  
Appellee.

STATEMENT OF POINTS UPON WHICH AP-  
PELLANTS INTEND TO RELY ON AP-  
PEAL

Comes now Ly Shew, as Guardian ad Litem of Ly Moon, a minor, and as Guardian ad Litem of Ly Sue Ning, a minor, by and through his attorney, Stanley J. Gale, and pursuant to Rule 19(6), Rules on Appeal, and files herein the statement of points which Appellants intend to rely upon in the appeal of the above-entitled matters.

## I.

That the District Court erred in finding that it is not true that Ly Moon and Ly Sue Ning, the persons who claim to be the plaintiffs herein, have always considered themselves and declared themselves to be citizens of the United States; it is not true that they have always intended to come to the United States; it is not true that it has always been their intention to keep and maintain their domicile and residence within and in the United States; it is not true that the residence and domicile of said Ly Moon and Ly Sue Ning is within the Northern District of California or within the United States of America.

## II.

That the District Court erred in finding that the persons who call themselves Ly Moon and Ly Sue Ning and who claim to be the plaintiffs herein and who claim to be the children of Ly Shew have failed to introduce evidence of sufficient clarity to satisfy or convince this Court that Ly Shew is the natural blood father of the persons known as Ly Moon and Ly Sue Ning; or that they were born at the times and in the places claimed; or that the persons who appeared before this Court claiming to be Ly Moon and Ly Sue Ning are in truth and in fact Ly Moon and Ly Sue Ning.

## III.

That the District Court erred in holding that the persons appearing before this Court as plaintiffs in this action are not entitled to the relief prayed for in the petitions.

## IV.

That the District Court erred in not making full and complete findings relative to all the material matters set forth in the respective petitions herein.

## V.

That the Judgment of the District Court is not supported by the law and the evidence adduced at the trial thereof.

## VI.

That the Judgment of the District Court is contrary to the law and the evidence adduced herein.

## VII.

That by reason of the law and the evidence the said minors are entitled to a Judgment finding and holding that the said minors are the children of Ly Shew, a citizen of the United States, and, as such children, they are themselves citizens of the United States at birth.

Dated: April 20, 1953.

/s/ STANLEY J. GALE,  
Attorney for Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed April 22, 1953.

]Title of Court of Appeals and Cause.]

DESIGNATION OF CONTENTS  
OF RECORD ON APPEAL

Pursuant to Rule 19(6) of the Rules on Appeal, Appellants hereby designate the following matters to be printed as the material portions of the record on appeal:

Case No. 31161 USDC.

1. Petition for Declaratory Judgment.
2. Answer of Defendant.
3. Order Granting Motion for Physical Examination.
4. Order dated April 6, 1953, substituting party Defendant.

Case No. 30159 USDC.

1. Petition for Declaratory Judgment.
2. Answer of Defendant.
3. Amended Complaint as of course.
4. Amended Answer of Defendant.
5. Order Granting Motion for Physical Examination.
6. Order of Court and Minute Order consolidating Cases No. 30159 and No. 31161 for Trial and Further Proceedings.
7. Order dated April 6, 1953, substituting party Defendant.

Cases No. 30159 and 31161, USDC, Consolidated

1. Findings of Fact and Conclusions of Law dated January 29, 1953.

2. Judgment dated January 20, 1953.
3. Motion to Vacate and Set Aside Findings of Fact and Conclusions of Law and Judgment dated January 31, 1953.
4. Findings of Fact and Conclusions of Law dated February 18, 1953.
5. Judgment dated February 18, 1953.
6. Notice of Appeal.
7. Statement of Points which Appellants Intend to Rely Upon in the Appeal of the above-entitled matters, (USDC).
8. Statement of Points Upon Which Appellants Intend to Rely Upon Appeal, (USCA).
9. Opinion of Goodman, District Judge, dated January 12, 1953. (As Appendix.)
10. This Designation.

Dated: April 20, 1953.

/s/ STANLEY J. GALE,  
Attorney for Appellants.

[Endorsed]: Filed April 22, 1953.

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[Title of Court of Appeals and Cause.]

### SUPPLEMENTAL DESIGNATION OF RECORD ON APPEAL

Pursuant to Rule 19(6) of the Rules on Appeal, Appellant hereby designates the following matters to be printed as material portions of record on appeal:



1. All exhibits introduced in said trial, including exhibits received in evidence and exhibits introduced for identification.

2. This designation.

Dated: April 27, 1953.

/s/ STANLEY J. GALE,  
Attorney for Appellant.

[Endorsed]: Filed April 28, 1953.

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United States Court of Appeals  
for the Ninth Circuit

[Title of Cause.]

Excerpt from Proceedings of Monday, May 4, 1953.

Before: Denman and Orr, C.J.J. and Carter, D.J.

ORDER SUBMITTING AND GRANTING MOTION FOR HEARING OF CAUSE ON TYPEWRITTEN REPORTER'S TRANSCRIPT AND BRIEFS, ETC.

Ordered motion of appellant for hearing of cause on typewritten reporter's transcript and typewritten briefs, and that exhibits be considered in their original form without the necessity of reproduction in the printed transcript of record, submitted to the court for consideration and decision.

On consideration whereof, further ordered that

said motion be, and hereby is granted, and that appellant be, and he hereby is permitted to prosecute his appeal herein on printed clerk's transcript, but on a single typewritten copy of the reporter's transcript, and that appellant be, and he hereby is permitted to file his briefs in typewritten form, prepared as required by Subdivision 6 of Rule 20, and that the exhibits in this cause be considered in their original form.

NAMES AND ADDRESSES OF ATTORNEYS

STANLEY J. GALE, ESQ.,  
320 Ochsner Building,  
Sacramento, California,

For Appellants.

LLOYD H. BURKE, ESQ.,  
United States Attorney,  
San Francisco, California,

For Appellee.

record reference is hereby made and the same is hereby expressly made a part hereof.

And Whereas, the said Ly Shew, etc., appealed to this court as by the inspection of the transcript of the record of the said District Court, which was brought into the United States Court of Appeals for the Ninth Circuit by virtue of an appeal agreeably to the Act of Congress, in such cases made and Provided, fully and at large appears.

And Whereas, on the 16th day of July, in the year of our Lord, one thousand nine hundred and fifty-four, the said cause came on to be heard before the said United States Court of Appeals for the Ninth Circuit, on the said transcript of record, and was duly submitted:

On Consideration Whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is vacated, and the causes be, and hereby are remanded with directions to make findings as to whether Ly Shew was the father of Moon and Ning, such findings to be made in the light of the opinion of this court, and thereupon enter such judgment as may be proper.

(December 30, 1954)

You, Therefore, are Hereby Commanded that such proceedings be had in said cause, in conformity with the opinion and judgment of this court, as

according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Earl Warren, Chief Justice of the United States, the tenth day of March in the year of our Lord one thousand nine hundred and fifty-five.

[Seal]     /s/ PAUL P. O'BRIEN,  
Clerk, United States Court of Appeals for the  
Ninth Circuit.

[Endorsed]: Filed February 10, 1955.

[Endorsed]: Re-Filed March 10, 1955.

In the United States District Court for the Northern  
 District of California, Southern Division  
 No. 30159

LY SHEW, as Guardian Ad Litem of LY MOON,  
 a Minor,  
 Plaintiff,

vs.

The Honorable DEAN ACHESON, as Secretary of  
 State of the United States,  
 Defendant.

No. 31161

LY SHEW, as Guardian Ad Litem of LY SUE  
 NING, a Minor,  
 Plaintiff,

vs.

The Honorable DEAN ACHESON, as Secretary of  
 State of the United States,  
 Defendant.

STANLEY J. GALE,  
 Sacramento, Calif.,  
 Attorney for Plaintiff.

CHARLES ELMER COLLETT,  
 Assistant U. S. Attorney,  
 San Francisco, Calif.,  
 Attorney for the Defendant.

Goodman, District Judge.

SUPPLEMENTAL OPINION AND FINDINGS  
 UPON REMAND FROM THE COURT OF  
 APPEALS

The Court heretofore filed its Opinion,<sup>1</sup> Findings

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<sup>1</sup>110 Fed. Supp. 50.

of Fact and Conclusions of Law and Judgment herein. Upon appeal and review by the Court of Appeals of this Circuit, the latter vacated our judgment and remanded the cause to us “with directions to make findings as to whether Ly Shew was the father of Moon and Ning, such findings to be made in the light of the opinion of this (Appellate) court, and thereupon enter such judgment as may be proper.”

The opinion<sup>2</sup> of the Court of Appeals stated that: “On the issue (thus) raised, Moon and Ning had the burden of proof, which is to say, the burden of proving that Ly Shew was their father.” That burden, the opinion states, was “the ordinary one,” i.e. “the ordinary burden of proof resting on plaintiffs in civil actions.” As to whether plaintiffs sustained that burden, the Court of Appeals expressed no opinion.

Recognizing that some of the evidence introduced by plaintiffs was uncontroverted, the opinion stated that we were “not required to believe such evidence or to accept it as true.”

Upon filing of the mandate here, we heard arguments from counsel with respect to new findings and judgment.

The statement of Chief Judge Denman in his dissenting opinion, *Ly Shew v. Dulles* . . F. 2d . . at p. . . that this Court wrongfully invoked a religious

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<sup>2</sup>F. 2d.

doctrine in its decision, requires airing. If I had thought that the simple statement in my opinion "In every sense, so far as I am concerned, this is God's country," would invoke criticism as a "wrongful invocation of religion," I would have spelled it out even more simply. How any reviewer could make out of this statement, anything more than a belief that this is a great country, smiled on by God, and a country which many oppressed people wish to enter, is most difficult to understand. But since the Chief Judge seems to have a different view, let me make it clear that no religious doctrine was invoked. The facts would have been appraised the same for Catholics, Jews, Protestants, Buddhists, as well as for so-called "Christo-Hebraics."

Upon consideration of the opinion and mandate of the Court of Appeals and the arguments of counsel, we now make the following Findings of Fact and Conclusions of Law:

1. It is not true that the persons who claim to be the plaintiffs herein have always considered themselves and declared themselves to be citizens of the United States; it is not true that they had always intended to come to the United States; and it is not true that it had always been their intention to keep and maintain a domicile and residence within the United States.

2. It is not true that the residence and domicile of said persons who claim to be plaintiffs is within the Northern District of California or in the United States of America.



3. In substantial respects, the evidence introduced by plaintiffs was inconsistent and contradictory and therefore not credible. Consequently it is not accepted as true. The burden of proving their citizenship rested upon plaintiffs. To sustain that burden plaintiffs had to prove by preponderating evidence that Ly Shew was their father. He may be, but plaintiffs did not sustain the burden of showing it. Hence, for that reason, the Court's finding is that Ly Shew was not the father of plaintiffs.

Conclusions of Law

1. The persons before the Court as plaintiffs in this action are not entitled to the relief prayed for.

Let judgment be entered accordingly.

Dated: March 31, 1955.

/s/ LOUIS E. GOODMAN,  
United States District Judge.

[Endorsed]: Filed April 1, 1955.

In the United States District Court for the Northern  
 District of California, Southern Division  
 Civil No. 30159

LY SHEW, as Guardian Ad Litem of LY MOON,  
 a Minor,

Plaintiff,

vs.

JOHN FOSTER DULLES, as Secretary of State  
 of the United States,

Defendant.

### JUDGMENT

The judgment of this court entered January 30, 1953, having been vacated and the cause remanded by the Court of Appeals, and the above-entitled court, Honorable Louis E. Goodman presiding, having on the 1st day of April, 1955, filed herein supplemental opinion and findings upon remand from the Court of Appeals, including findings of fact and conclusions of law, and having directed that judgment be entered in accordance therewith,

Now, Therefore, It Is Ordered, Adjudged and Decreed:

1. That Ly Shew is not the father of Ly Moon.
2. That the relief sought by the plaintiff Ly Moon by his guardian Ly Shew, is denied.

Dated: April 5, 1955.

/s/ LOUIS E. GOODMAN,  
 United States District Judge.

[Endorsed]: Filed April 5, 1955.

Entered April 6, 1955.

In the United States District Court for the Northern  
District of California, Southern Division

Civil No. 31161

LY SHEW, as Guardian Ad Litem of LY SUE  
NING, a Minor,

Plaintiff,

vs.

JOHN FOSTER DULLES, as Secretary of State  
of the United States,

Defendant.

### JUDGMENT

The judgment of this court entered January 30, 1953, having been vacated and the cause remanded by the Court of Appeals, and the above-entitled court, Honorable Louis E. Goodman presiding, having on the 1st day of April, 1955, filed herein supplemental opinion and findings upon remand from the Court of Appeals, including findings of fact and conclusions of law, and having directed that judgment be entered in accordance therewith,

Now, Therefore, It Is Ordered, Adjudged and Decreed:

1. That Ly Shew is not the father of Ly Sue Ning.

2. That the relief sought by the plaintiff Ly Sue Ning by her guardian Ly Shew, is denied.

Dated: April 5, 1955.

/s/ LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed April 5, 1955.

Entered April 6, 1955.

[Title of District Court and Cause.]

### NOTICE OF APPEAL

Comes Now Ly Shew, as Guardian Ad Litem of Ly Moon and Ly Sue Ning, minors, and hereby gives notice of appeal and does hereby appeal to the United States Court of Appeals for the Ninth Circuit, from the Judgment of this Court, entered on the 6th day of April, 1955, in the above-entitled matters, in favor of the Defendant above named and against the said Plaintiffs above named, and from the whole thereof.

Dated: April 15, 1955.

/s/ STANLEY J. GALE,  
Attorney for Plaintiffs.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 19, 1955.

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[Title of District Court and Cause.]

### ORDER OF CONSOLIDATION

Upon reading and filing the affidavit of Stanley J. Gale and good cause appearing therefor;

It Is Hereby Ordered that the above-entitled matters be and the same hereby are consolidated for appeal.

/s/ O. D. HAMLIN,  
Judge of the District Court.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 6, 1955.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO TRANSCRIPT  
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents, listed below, are the originals filed in the above-entitled cases and that they constitute the record on appeal herein as designated by the attorney for the appellants:

Orders denying petition for rehearing in banc and denying petition for rehearing by U. S. Court of Appeals;

Mandate of U. S. Court of Appeals;

Supplemental opinion and findings upon remand from the Court of Appeals;

Judgment in Cause No. 30159, filed April 5, 1955;

Judgment in Cause No. 31161, filed April 5, 1955;

Notice of Appeal;

Designation of Record on Appeal;

Cost bond in Cause No. 30159 on appeal;

Cost bond in Cause No. 31161 on appeal;

Order of Consolidation;

Affidavit for order of consolidation on appeal;



In the United States Court of Appeals  
for the Ninth Circuit

No. 14768

LY SHEW, as Guardian Ad Litem of LY MOON,  
a Minor,

Appellant,

vs.

THE HONORABLE JOHN FOSTER DULLES,  
as Secretary of State of the United States,

Appellee.

LY SHEW, as Guardian Ad Litem of LY SUE  
NING, a Minor,

Appellant,

vs.

THE HONORABLE JOHN FOSTER DULLES,  
as Secretary of State of the United States,

Appellee.

STATEMENT OF POINTS UPON WHICH  
APPELLANTS INTEND TO RELY ON  
APPEAL

Comes now Ly Shew, as Guardian Ad Litem of Ly Moon, a minor, and as Guardian Ad Litem of Ly Sue Ning, a minor, by and through his attorney, Stanley J. Gale, and pursuant to Rule 17(6), Rules on Appeal, and files herein a statement of points which appellant intends to rely upon on appeal in the above-entitled matters.

## I.

That the findings of the District Court are contrary to the law and contrary to the evidence adduced at the trial.

## II.

That the judgment of the District Court is contrary to law and contrary to the evidence adduced at the trial.

## III.

That by reason of the law and the evidence the said minors are entitled to a Judgment finding and holding that the said minors are the children of Ly Shew, a citizen of the United States, and, as such children, they are themselves citizens of the United States at birth.

Dated: May 24, 1955.

/s/ STANLEY J. GALE,  
Attorney for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 26, 1955.

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At a Stated Term, to wit: The October Term, 1954, of the United States Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the sixth day of June in the year of our Lord one thousand nine hundred and fifty-five.



Present: Honorable William Denman,  
Chief Judge, Presiding;  
Honorable Homer T. Bone,  
Circuit Judge;  
Honorable William J. Lindberg,  
District Judge.

[Title of Cause.]

### ORDER

Upon motion duly made and submitted to the Court for consideration and decision on June 6, 1955; and,

Upon consideration thereof it is hereby Ordered that said motion be, and same hereby is granted and that appellant be, and he hereby is permitted to prosecute his appeal herein in the following manner:

(1) Upon consideration of the original Reporter's Transcript, the briefs and the exhibits in their original form, as contained in proceedings No. 13808 of the records of this Court.

(2) Upon the original Reporter's typewritten transcript of the proceedings held in the Trial Court after the remand of said action No. 13808.

(3) Upon the original printed transcript of the record contained in proceedings No. 13808.

(4) That appellant be and he hereby is permitted to file his briefs herein in typewritten form, prepared as required by Subdivision 6 of Rule 20 of the Rules of this Court.

That it is further Ordered that appellant only be required to print, as an amendment to the prior printed transcript of record, the following items:

(a) Supplemental opinion and findings of fact and conclusion of law after remand of proceedings No. 13808 to the Trial Court.

(b) Judgment.

(c) This designation.